HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No.1824 of 2004

Date of decision 05.12.2006

Sunil Kumar and another

...Appellants

Versus

Kamla Dev and others

...Respondents

Coram: Hon'ble Mr.Justice Hemant Gupta

Present: Mr.Sachin Mittal, Advocate
for the appellant.

JUDGMENT

HEMANT GUPTA, J.(Oral)

The defendant is in second appeal aggrieved against the judgment and decree passed by the courts below, whereby the suit for declaration challenging the decree dated 24th May, 1998 suffered by defendant No.6 in favour of his sister's son, was dismissed.

It has been found that the suit is beyond the period of limitation as the decree was passed in the year 1988, whereas the suit has been filed in the year 1999. Still further, the plaintiff has failed to prove that property in question, was ancestral. Since the property was not declared to be ancestral. Therefore, the plaintiff cannot challenge the action of his father in suffering a consent decree.

It is a finding of fact recorded by the courts below that the property in hands of Nafe Singh-defendant No.6 was not joint Hindu Family

property. The said defendant was the owner as his self-acquired property, therefore, it was open to defendant No.6 to suffer a decree in favour of member of his family i.e. sister's son. The plaintiff has sought to challenge such a decree after more than six years. Such suit is beyond the period of limitation.

In view of the above, I do not find any illegality or irregularity in the findings recorded by the courts below, which may raise any substantial question of law in the second appeal, for consideration of this Court, the appeal is dismissed in limine.

(**HEMANT GUPTA**)
JUDGE

05.12.2006
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